

BEFORE THE
Communications Commission
WASHINGTON, D.C.

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WC Docket No. 09-154

**REPLY COMMENTS OF
THE ALABAMA CABLE TELECOMMUNICATIONS ASSOCIATION
THE BROADBAND CABLE ASSOCIATION OF PENNSYLVANIA
THE CABLE TELEVISION ASSOCIATION OF GEORGIA
THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.
THE NEW ENGLAND CABLE AND TELECOMMUNICATIONS ASSOCIATION, INC.
THE BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON
MEDIACOM COMMUNICATIONS CORPORATION**

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Petition for Declaratory Ruling of
American Electric Power Service Corporation, et al.
Regarding the Rate for Cable System Pole
Attachments Used to Provide Voice Over Internet
Protocol Service

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The Alabama Cable Telecommunications Association, the Broadband Cable Association of Pennsylvania, the Cable Television Association of Georgia, the Florida Cable Telecommunications Association, Inc., the New England Cable and Telecommunications Association, Inc., and the Broadband Communications Association of Washington¹ (the "State Cable Associations") and Mediacom Communications Corporation ("Mediacom") hereby submit reply comments in response to comments on the Petition for Declaratory Ruling ("Petition") filed jointly by American Electric Power Service Corporation, Duke Energy Corporation, Southern Company, and Xcel Energy Services Inc. ("Electric Utilities" or "Petitioners").

¹ The Broadband Communications Association of Washington joins in these Reply Comments.

INTRODUCTION AND SUMMARY

The meager comments filed by Petitioners and other electric utilities and their associations confirm that this docket is *not* where the Commission should classify interconnected VoIP service or set a new VoIP pole attachment rental for cable operators. Nonetheless, Petitioners ask the Commission to increase cable operators' pole rental by declaring that VoIP is the "functional equivalent" of a telecommunications service, notwithstanding the Commission's multiple statements that functional equivalency is not determinative of regulatory classification and that, in any event, the Commission will decide this precise classification issue in the *IP-Enabled Services Rulemaking* docket.² Possible changes in pole rental are also being considered in three other broadband-related dockets.

Moreover, the utilities repeat and recast their well-worn claim that the current pole rental paid by cable operators is subsidized, although this specific claim has been rejected by the Commission and every court and state public service commission to consider it. In addition, Petitioners and commenting utilities tacitly acknowledge that an increase in pole rental has nothing to do with any added burdens or unrecovered costs of hosting third-party attachments for the simple reason that there are none. Finally, it is disingenuous when Petitioners and the utility commenters claim they are advancing the interests of the telecom attachers in asking for cable operators to pay higher rates; the telecom attachers (except for AT&T) agree that, if the formula is changed at all, the rates should come down to the cable rate.

For these reasons, the Petition should be denied.

² *IP-Enabled Services*, Notice of Proposed Rulemaking, FCC 04-28, 19 FCC Rcd. 4863 (2004).

I. The Pole Rental Paid by Cable Operators for Attachments Carrying Video, Internet and Information Services Under the Current FCC Formula is Fully Compensatory, Profit-Generating and Neither Discriminatory nor Subsidized

The pole owning electric utilities, including Petitioners, have long argued that the current statutory and regulatory regime for regulating pole attachment rental is unconstitutional. The claim was first characterized as a “taking,” but rejected in multiple FCC and court proceedings.³ In order to avoid that precedent, Petitioners now recast their claim and argue that the rates produced under the formula for cable operators is a “subsidy.”⁴ This is nothing more than the same discredited takings argument, and should again be rejected.

Although the name of their argument has changed slightly from “taking” to “subsidy,” Petitioners have not changed the basis for their argument at all. Here, as in the past, pole owners argue that the current cable rate formula is a taking (and now a subsidy) because it does not factor in the cable operator’s use of unusable space.⁵ However, the Commission has considered and rejected the utilities’ claim that “the cable rate formula does not require cable attachers to

³ See, e.g., *FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987) (“*Florida Power*”); *Gulf Power Co. v. United States*, 187 F.3d 1324 (11th Cir. 1999); *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002) (“*Alabama Power*”); *Alabama Cable Telecomms. Ass’n v. Alabama Power Co.*, 16 FCC Rcd. 12209 ¶¶ 48-58 (2001) (“*ACTA v. Alabama Power*”).

⁴ As an initial stab, AEP says rates that are just compensation may still be subsidized, but then cites a case that does not remotely support their point. Comments of American Electric Power Service Corp., *et al.* at 32 n.89 (hereinafter “AEP Comments”). In any event, as discussed below, any rate that allows for cost recovery and profit could not be deemed subsidized.

⁵ AEP Comments at 28 (“The Cable Rate is inherently a subsidy rate formula because it does not divide the cost of the common (i.e., so-called ‘unusable’) space on the pole equally among all attachers.”); *id.* at 33 (“Because it does not divide the cost of the common space equally among all attachers, the Cable Rate is inherently a subsidy formula that does not achieve a full allocation of the costs properly allocable to cable attachers”); Comments of Edison Electric Institute and Utilities Telecom Council (hereinafter “EEI/UTC Comments”) at 3 (“[E]nsure that CATV operators pay something closer to their fair share of the costs of the poles.”); Comments of Coalition of Concerned Utilities at 1, 3, 4, and 15 (hereinafter “Coalition Comments”) (“unwarranted colossal subsidy”; the “artificially low, subsidized Cable-only rate”; “artificially low Cable-only pole attachment rates”; and “A higher than Telecom rate for more than telecom services would provide a much fairer allocation of costs and eliminate the subsidy altogether for cable operators and CLECs alike.”).

pay their fair share of unusable space and that cable operators must pay the telecommunications rate in order to provide just compensation to the utility.”⁶ Specifically, the Commission clarified that, “[u]nder the *Cable Formula*, the costs of unusable space are allocated based on the portion of usable space an attachment occupies, the space factor.”⁷ The Commission admonished pole owners that their unusable space claim was a “mischaracterization” of the *Cable Formula*:

Respondent [Alabama Power] also claims that the cable rate formula does not require cable attachers to pay their fair share of unusable space and that cable operators must pay the telecommunications rate in order to provide just compensation to the utility. Respondent’s repeated claims that cable attachers do not pay for any costs of unusable space is **a complete mischaracterization** of the Pole Attachment Act and the Commission’s rules. Cable attachers pay all of the costs associated with the pole attachment, which are allocated based on the portion of usable space occupied by the attachment. The costs associated with the entire pole are included in that calculation.⁸

The significant difference in the cable and telecom formulas is how the unusable space is allocated, not whether it is allocated or not. While the unusable parts of the pole are apportioned solely according to relative use under the cable formula, under the telecom formula the costs of the unusable are shared among the entities attached to the poles, along with the costs of the portion of usable space occupied. This is how the Commission explained it:

In the *Telecom Order*, we adopted a formula for the purpose of allocating costs of unusable space. Under the *Telecom Formula*, pursuant to the specific requirements of the Pole Attachment Act, the costs of unusable space are separated from the costs of usable space and are allocated based on the number of

⁶ *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 58. See also *Amendment of Commission’s Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103 ¶¶ 48-52 (2001) (hereinafter “*Recon. Order*”).

⁷ *Recon. Order*, 16 FCC Rcd. 12103 ¶ 53.

⁸ *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 60 (emphasis added). The Commission reiterated that the formula allows the utility to earn a return on its investment at a rate approved for property used in a regulated industry. *Id.* ¶¶ 51-52.

attaching entities. *The costs of usable space are still calculated based on the portion of usable space occupied.*⁹

An allocation of the unusable parts of the pole based on usable space occupied does not convert the cable rate into a subsidized rate. Indeed, one of the Petitioners' affiliates made this precise argument but lost in the Eleventh Circuit. The Court found that "it is irrelevant that the Telecom Rate provided in 47 U.S.C. § 224(e) yields a higher rate for telecommunications attachments than the Cable Rate provides for cable attachments."¹⁰ The Court agreed with the FCC's observation that "Congress' decision to choose a slightly different rate methodology, more suited in its opinion to telecommunications service providers, does not call into question the constitutionality of the cable rate formula ... because both formulas provide just compensation under the Fifth Amendment.... Congress used its legislative discretion in determining that cable and telecommunications attachers should pay different rates."¹¹

Having disposed of the misallocation concept, it is readily apparent the utilities use the term "subsidy" here to really mean any rate that does not reflect an "equal" or what they deem to be a "full" sharing of the costs of the utility's pole network. However, it is a widely acknowledged tenet of economics that a rate is not a subsidized rate if it covers the provider's marginal costs.¹² In addition, for a rate to be considered subsidized, there must be unrecovered costs that would not have occurred *but for* the attacher's presence on the pole. This is most assuredly not the case where rental rates more than cover the incremental cost of hosting third-party

⁹ *Recon. Order*, 16 FCC Rcd. 12103 ¶ 55 (emphasis added).

¹⁰ *Alabama Power*, 311 F.3d at 1371 n.23 (11th Cir. 2002).

¹¹ *Id.*, quoting *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 49 (emphasis added).

¹² See, e.g., Paul A. Samuelson, *Economics* (10th ed. 1976) at 462-63; Comments of Comcast Corporation, WC Docket 07-245 (hereinafter "*Broadband Pole Proceeding*"), Exhibit 1, Report of Patricia D. Kravtin ¶¶ 46-49 (filed Mar. 7, 2008) (hereinafter "*Kravtin Report*").

attachments and provide a return on investment. From an economics standpoint, where rates cover the incremental or marginal cost of attachment, neither the utility nor any of the other parties sharing the pole will bear a higher cost as a result of the attachment than they would absent the attachment.¹³ And the *Cable Formula* provides much more than marginal costs—it allows the utility to recover its “fully allocated” costs. In addition, the *Cable Formula* includes profit in the form of a return on the utilities’ investment in their entire pole infrastructure.¹⁴

The claimed inadequacy of the *Cable Formula* really means the Petitioners are claiming the right to charge a rate in excess of the marginal costs of hosting attachments, which is the “hold-up” value of the pole space, a right to which they would never be entitled under any precedent.¹⁵ The Petitioners’ related attempt to characterize the inadequacy of the pole rental not by out of pocket losses, but by the benefit to attachers such as cable operators of some or a portion of the unusable space as allocated under the telecom formula, is thus entirely irrelevant to the propriety of the cable formula and regulatory policy. In addition, the utilities ignore the fact that through make-ready payments the attachers actually *enhance* the utilities’ pole plant.¹⁶

¹³ See also Bridger M. Mitchell, “Costs and Cross-Subsidies in Telecommunications,” *The Changing Nature of Telecommunications/Information Infrastructure*, National Academy Press, Washington, DC, 1995. “A group of customers is being subsidized if their price is so low that the service supplier and its other customers would be better off if the service were discontinued. This circumstance occurs only when the increase in revenues to the [telephone] company from offering the service is less than the increased costs of providing it.”

¹⁴ *Recon. Order*, 16 FCC Rcd 12103 ¶¶ 48-52.

¹⁵ The Supreme Court has held that the Takings Clause does not prevent Congress, through just and reasonable rate regulation, from preventing exploitation of monopoly power. When no fair market exists, as in this case, sellers may not engage in profiteering under cover of the Constitution and extract whatever they can get. *United States v. Cors*, 337 U.S. 325 (1949). “Bottleneck” sellers such as pole owning electric utilities, are not entitled to the “hold-up” value of their property. *United States v. Miller*, 317 U.S. 369, 375 (1943). See also *Loretto v. Group W Cable*, 135 A.D.2d 444, 448, 522 N.Y.S.2d 543, 546 (App. Div. 1987) (likely award of one dollar), *appeal denied*, 71 N.Y.2d 802 (Table), *cert. denied*, 488 U.S. 827 (1988).

¹⁶ *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 58 (“In instances where attachers pay the costs of a replacement pole, the attacher actually increases the utility’s asset value and defers some of the costs of the physical plant the utility would otherwise be required to construct as part of its core service.”).

As a last ditch effort to challenge the *Cable Formula*, Petitioners claim it is discriminatory and therefore violates the very statute that implements it. This is just a bootstrap effort to obtain the telecom rate because the discrimination is entirely based on the purported unfair allocation of the costs of unusable space that have been shown to be misstated and irrelevant. Congress itself created the noted rate disparities and curiously we have not heard one word that cable operators providing Internet service over attachments at the cable rate are unduly preferred over CLECs providing Internet service over their attachments at the telecom rate. This is because the discrimination claim is entirely illogical.

If the telecom rate and cable rate have their own statutory genesis and each is deemed compensatory, there is no reason to create a new category of dispute claiming discrimination. "Congress used its legislative discretion in determining that cable and telecommunications attachers should pay different rates."¹⁷

II. This is Not the Docket to Classify VoIP Services or Change Existing Pole Attachment Rental Rates

The cable commenters and even one utility association commenter recognize that this docket is not where increases in cable's pole rates should be considered.¹⁸ It is also not the docket where VoIP classification should be considered. "Petitioners are clearly frustrated by the refusal of the CATV industry to pay the Telecom Rate for their CATV VoIP attachments."¹⁹ But

¹⁷ *Alabama Power*, 311 F.3d at 1371 n.23, quoting *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 49.

¹⁸ See, e.g., Comments of the State Associations and Mediacom at 3-4; Comcast Comments at 3-4; Comments of the United States Telecom Association at 4 (hereinafter "USTA Comments") ("The FCC's review of pole attachment reform should be addressed outside the confines of the current proceeding, and considered in the broader context of its ongoing comprehensive poles docket, and possibly even within the development of its National Broadband Plan.").

¹⁹ EEI/UTC Comments at 2.

that does not mean the Commission should accept the Petitioners' claims and conclude here that VoIP is the equivalent of telecommunications. The issue is one exclusively for the Commission to determine in a pending docket. Asking the Commission to sanction the telecom rate on VoIP attachments here is thus misplaced and premature.²⁰

For example, in litigation commenced by Union Electric Company (d/b/a AmerenUE) against Charter Communications, Inc. to collect rent at the telecom rate on all Charter's poles on account of Charter's VoIP service, Judge Jackson observed that the FCC's ongoing *IP-Enabled Services Proceeding* will decide the federal law classification of VoIP, and pointed out that, "[i]f a pole attachment involves VoIP, then [Ameren] would be entitled to [the telecom rate] for the attachment *only* if VoIP is classified as telecommunication. The FCC has not determined whether VoIP should be classified as a telecommunication service, and it is the FCC that has exclusive authority to make this classification decision."²¹

Nonetheless, Petitioners facilely conclude that VoIP is a telecommunications service and thus should be subject to the telecom rate merely because VoIP and telecom appear to be "equivalent" to Petitioners.²² While the FCC "recognize[d] that some enhanced services may do

²⁰ *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, and NPRM, FCC 07-188, 22 FCC Rcd 19531 n.50 (2007) ("We continue to consider whether interconnected VoIP services are telecommunications services or information services as those terms are defined in the Act, and we do not make that determination today."), *pet. for review denied*, 563 F.3d 536 (D.C. Cir. 2009).

²¹ *Union Elec. Co. d/b/a AmerenUE v. Charter Commc'ns, Inc.*, No. 4:05-CV-2256, Memorandum and Order at 7 (E.D. Mo. Aug. 22, 2006) (emphasis added). It should be noted that even if there is a classification in the pending proceeding, the Commission could and should prescribe the *Cable Formula* for commingled cable, information and telecommunications services. See Comments of Comcast Corporation at 23-32; Comments of the National Cable & Telecommunications Association at 17-23.

²² Coalition Comments at 2, 5 ("VoIP is the functional equivalent of circuit-switched telephone service" and "VoIP service is at least the functional equivalent of circuit-switched telephone service"); AEP Comments at 9-10 (VoIP is functional equivalent of circuit-switched); *id.* at 10 ("VoIP is 'functionally indistinguishable' from traditional telephone service" and "VoIP technology is 'virtually indistinguishable' from traditional telephone service offered by competing telephone companies" (emphasis in original); *id.* at 8-9, 12 (cable companies boast and advertise their

some of the same things that regulated communications services did in the past” and “are not dramatically dissimilar from basic services,”²³ the statutory definition of telecommunications requires transmission without a change of form *or* content.²⁴ If the form is changed so as to deliver a communication to an otherwise incompatible network, the service is an information service even if the content is the same.²⁵ The FCC found that the statutory definition of information service “makes no reference to the term ‘content,’ but requires only that an information service transform or process ‘information.’”²⁶ As one court observed, “[i]t does not matter that there is a ‘voice’ at both ends of an IP-PSTN call.”²⁷ Accordingly, the efforts of Petitioners (and others) at characterizing VoIP as the “functional equivalent” of a

service as functionally equivalent). *See also* EEI/UTC Comments at 5 (“For the purpose of Section 224, to exclude VoIP from the meaning of the term ‘telecommunications services’ would be arbitrary and capricious and unduly discriminatory.”).

²³ *See Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 FCC2d 384 ¶¶ 130, 132 (1980) (hereinafter “*Computer II*”).

²⁴ *See* 47 U.S.C. § 153(46) (statutory definition of “telecommunications service”).

²⁵ Indeed, any consideration of classification would necessarily involve complex questions relating to “net protocol conversion.” *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, First Report & Order and FNPRM, 11 FCC Rcd. 21905 ¶ 104 (1997) (hereinafter “*Non-Accounting Safeguards Order*”) (“protocol processing services constitute information services under the 1996 Act”); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 ¶ 51 (1998) (“services offering net protocol conversion ... offer a capability for ‘transforming [and] processing’ information.”); *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd. 7457 ¶¶ 6-7 (2004) (clarifying that services that offer net protocol conversion are information services); *Communications Protocols under Section 64.702 of the Board’s Rules and Regulations*, 95 FCC2d 584 ¶ 16 (1983) (clarifying that only “net” protocol conversions, in which information is terminated in a protocol different from the one in which it entered the network, qualify as enhanced services); *Petitions for Waiver of Section 64.702 of the Board’s Rules*, 100 FCC2d 1057 ¶ 22 (1985) (“When a signal thus enters the packet network in asynchronous format and exits the network in X.25 format, a net protocol conversion occurs.”); *Independent Data Commc’ns Mfrs. Ass’n, Inc.*, 10 FCC Rcd. 13717 ¶¶ 36, 40 (1995) (FCC recognized that AT&T’s Interspan frame relay product, which converts data from asynchronous protocols to the X.25 protocol, qualified as an enhanced service).

²⁶ *Non-Accounting Safeguards Order*, 11 FCC Rcd. 21905 ¶ 104 (analyzing 47 U.S.C. § 153(20) (statutory definition of “information service”).

²⁷ *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1082 n.21 (E.D. Mo. 2006).

telecommunications service, even where the called party hears content (i.e., a voice sound) that is virtually the same as the sound generated by the calling party, is entirely without merit.²⁸

III. Petitioners' Proposed Pole Attachment Rental Increase Will Negatively Impact Broadband Deployment

Petitioners claim that an increase in pole rates will have no negative impact. To the contrary, higher pole rates will have a significant negative effect on all cable attachers, whether they are small operators or "Cable Giants."²⁹

Having to absorb higher pole rents will reduce the cable industry's ability to meet financial and investment obligations including those related to the build out of infrastructure needed to support the widespread deployment of advanced information-age services and technologies, including VoIP services. Investment in marginal areas, such as rural areas of the country, will be most notably impacted. Higher pole costs are likely to make construction in such areas uneconomic, despite the existence of surplus space on utility poles that would otherwise be available and readily utilized for deployment of advanced service and technologies.³⁰

Communications attachers have no practical choice but to attach to utility poles. Moreover, attachers pay all the costs associated with hosting their attachments (and preparing the poles through make-ready to accept the attachments) without having to exclude other existing or potential users. In addition, communications attachers receive no benefit from improvements to

²⁸ Functional equivalency is not at all determinative of regulatory classification. The FCC has recognized that "some enhanced services may do some of the same things that regulated communications services did in the past" and "are not dramatically dissimilar from basic services." See *Computer II*, 77 FCC2d 384 ¶¶ 130, 132. And in the AT&T "VoIP in the middle" decision, the FCC recognized that computer inquiry line of decisions is the starting point for VoIP analysis. *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 ¶ 4 (2004) ("The first set of definitions relevant to the Commission's regulatory treatment of VoIP was developed in the *Computer Inquiries* line of decisions.").

²⁹ AEP Comments at ii, 14, 28, 30, 31, and 36.

³⁰ *Kravtin Report* ¶ 80. Indeed, the impact would be significantly higher in rural areas because of the higher number of poles per subscriber. USTA Comments at 4. USTA suggests the cable rate should be adopted universally. *Id.* at 3-4.

the utility pole they have financed through make-ready other than the ability to attach; any added value to the utility's pole assets created through the make-ready process accrues to the sole benefit of the utility owner. "In instances where attachers pay the costs of a replacement pole, the attacher actually increases the utility's asset value and defers some of the costs of the physical plant the utility would otherwise be required to construct as part of its core service."³¹

Increasing pole rentals, as proposed by Petitioners, already has been shown to have a substantial negative impact on deployment and service costs.³² As a result, keeping pole rents at the current levels will do far more to achieve the policy of enhancing ubiquitous broadband availability. "From an economics and public policy perspective, if parity in formula rates is the desired goal, then the correct way to achieve this goal and avoid any negative impact on competition and deployment of broadband services is to charge CLECs and other third-party telecommunications attachers the lower cable rate."³³ Even a major pole owning ILEC agrees: "In fact, to encourage broadband deployment and investment, if the choice is between the two existing rates as the electric companies propose, the Commission should adopt the lower *cable rate* as the uniform rate for all broadband attachments."³⁴

³¹ *ACTA v. Alabama Power*, 16 FCC Rcd. 12209 ¶ 58.

³² See Comments of Charter Communications, Inc. in *Broadband Pole Proceeding*, WC Docket 07-245, at 3-6, Tables 1-3 (filed Mar. 7, 2008).

³³ *Kravtin Report* ¶ 77. USTA and tw telecom agree and suggest the cable rate should be applied to all attachments. USTA Comments at 3-4 ("Rather than increase the impact of pole attachments on the costs of deploying broadband, the Commission should be concerned with ensuring that such costs do not unnecessarily deter the extension of broadband networks and the adoption by end users."); Comments of tw telecom at 2-3 ("The Commission should instead ensure that all attachers pay rates at or near the rates yielded by the existing cable rate formula since those rates are fully compensatory.").

³⁴ Verizon Comments at 2 (emphasis added). In this and the *Broadband Pole Proceeding*, AT&T proposed a pole rate *above* the telecom rate. In this proceeding, AT&T attached its October 21, 2008 *ex parte* letter (from 07-245) and re-offered the rate proposal offered last year by itself and Verizon in that *ex parte* filing. AT&T Comments at 4-5. As quoted above, Verizon has now disclaimed that proposal. In any event, NCTA fully demonstrated the errors in AT&T's analysis. *Ex parte* letter from NCTA to Marlene H. Dortch (Nov. 14, 2008), Docket 07-245.

CONCLUSION

None of the commenters urging a substantial increase in pole attachment rates for all broadband services, including VoIP, make any valid economic or regulatory arguments. Instead, the cable rate, upheld in decades of precedent from the courts and the Commission, should apply.

The Petitioners' request for a declaratory ruling should be denied.

Respectfully submitted,

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